

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE
DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL
(DoD OIG), THE ENVIRONMENTAL PROTECTION AGENCY (EPA),
AND THE ENVIRONMENTAL PROTECTION AGENCY OFFICE OF
INSPECTOR GENERAL (EPA OIG)**

On or about December 13, 2013, the EPA OIG contacted the Council of Inspectors General on Integrity and Efficiency (CIGIE) for the purpose of identifying another federal OIG capable of conducting an investigation into allegations of employee misconduct arising out of an incident primarily involving EPA OIG [REDACTED] and an EPA employee [REDACTED] which occurred on [REDACTED] 2013. See January 24, 2014 letter from Arthur A. Elkins, Jr. to Phyllis K. Fong, attached hereto and incorporated herein. Ms. Fong, in her role as Chair of the CIGIE, subsequently asked the DoD IG to engage with the EPA IG to determine if the DoD IG would be willing to provide the requested investigative support. Following discussions between representatives of the DoD OIG and the EPA OIG, the DoD IG expressed a willingness to provide the requested investigative support on a non-reimbursable basis and the EPA IG determined that DoD IG is able to provide the requested investigative support.

WHEREFORE, pursuant to the Inspector General Act of 1978, as amended, the DoD IG, the EPA, and the EPA IG hereby agree that the DoD OIG will provide the requested investigative support pursuant to the following terms and conditions:

1. INTERAGENCY CONTACTS

Avi Garbow, General Counsel, EPA, 202-564-8040, garbow.avi@epa.gov; Patrick Sullivan, Assistant Inspector General for Investigations, EPA OIG, 202-566-0308, sullivan.patrick@epa.gov; and Henry C. Shelley, Jr., General Counsel, DoD OIG, 703-604-8350, henry.shelley@dodig.mil shall be the primary Interagency Contacts for their respective organizations in matters of policy and procedures, implementation of this MOU, and the initiation of an inquiry or an investigation.

2. INVESTIGATIVE ASSISTANCE

The DoD OIG will:

- A. Provide investigators to conduct a thorough and professional investigation of all facts and circumstances relating to the allegations of employee misconduct arising out of the above referenced incident.

EPA OIG will:

- A. Ensure the DoD OIG investigators have access to all EPA OIG information and records related to the allegations as deemed relevant by the DoD OIG investigators; and
- B. Ensure that EPA OIG employees are made available for interviews and testimony as requested by the DoD OIG investigators.

EPA will:

- A. Provide the DoD OIG investigators with a Letter of Authority to conduct an investigation at EPA, which will state that the DoD OIG investigators are authorized to conduct investigative activities at EPA and are authorized access to any and all EPA employees, records, and information to the same extent that the EPA OIG would have such access. The DoD OIG investigators envision using this Letter to assure EPA personnel of the propriety and legality of their investigative activities;
- B. Ensure the DoD OIG investigators have the same access that the EPA OIG would have to all EPA information and records related to the allegations as deemed relevant by the DoD OIG investigators;
- C. Ensure that EPA employees are made available in the same manner they are made available to the EPA OIG for interviews and testimony as requested by the DoD OIG investigators;
- D. Provide the DoD OIG investigators with an electronic copy of US EPA Order 3120.1, "Conduct and Discipline Manual," together with electronic copies of any other EPA rules, regulations, and/or guidance regarding employee conduct and discipline; and
- E. Provide the DoD OIG investigators with a secure workspace in which to conduct interviews, review documents, and prepare their report.

3. REFERRALS AND FOLLOW-UP ACTIONS

DoD OIG will initiate any criminal, civil, or administrative referrals it deems appropriate based upon information/evidence developed during its investigative activities herein.

4. PERIOD OF PERFORMANCE

The requested investigation is anticipated to formally begin on or about March 3, 2014 and to be completed by May 30, 2014. If the DoD OIG investigators determine by April 30, 2014 that their investigation will not be completed by May 30, 2014, then the DoD OIG investigators will notify the EPA Interagency Contact and the EPA OIG Interagency Contact. The DoD OIG, with notice to EPA and the EPA OIG, will determine when the investigation is complete.

5. ADHERENCE TO PROFESSIONAL STANDARDS

The DoD OIG investigators assigned to conduct the requested investigation shall at all times comply with applicable legal requirements and shall adhere to all CIGIE professional standards applicable to his/her performance, as well as the Inspector General Act of 1978, as amended.

6. REPORTS

- A. The DoD OIG Investigators assigned to the investigation will produce a final report in the same manner specified in the internal procedures of the DoD OIG (which are hereby incorporated by reference). The final report shall be provided to the EPA Interagency Contact and the EPA OIG Interagency Contact, or a designee thereof.
- B. At the conclusion of the investigation, the DoD OIG will retain all original documents related to the investigation, with the exception of EPA and EPA OIG original documents, which will be returned and a copy retained in the DoD OIG file. The DoD OIG will deliver to the EPA Interagency Contact and the EPA OIG Interagency Contact copies of the resulting Report of Investigation, with all relevant evidence and exhibits attached. The DoD OIG will deliver to the EPA Interagency Contact and the EPA OIG Interagency Contact copies of any addendums to the Report of Investigation and copies of the entire case file, including agents' notes, Memorandums of Interviews and any other case-related material, for any use that the EPA OIG deems appropriate.

- C. In the event that the materials generated as a result of the investigation become the subject of any Freedom of Information, Privacy Act, and/or Congressional request, the DoD OIG, as the party retaining the official investigative file, will assume responsibility for responding to the request for access. However, the DoD OIG agrees to forward the portion of the request for access dealing with EPA and/or EPA OIG source documents (EPA and/or EPA OIG originated documents) to the EPA Interagency Contact or the EPA OIG Interagency Contact, as appropriate, for determination regarding releasability. As to documents generated by the DoD OIG, the DoD OIG will determine what disclosure, if any, is appropriate.

7. ADMINISTRATIVE MATTERS

The EPA and the EPA OIG agree to protect any personal information relating to the DoD OIG investigators assigned to conduct investigative activities pursuant to this MOU as required under the Privacy Act, 5 U.S.C. § 552a, and Freedom of Information Act, 5 U.S.C. § 552.

8. AUTHORITY

- A. The investigative support provided pursuant to this MOU is provided in accordance with the Inspector General Act of 1978, as amended, (5 U.S.C. App. 3) and applicable federal laws and regulations governing the EPA OIG and DoD OIG.
- B. DoD OIG access to EPA and EPA OIG information or records subject to the Privacy Act is hereby requested and granted in accordance with 5 U.S.C. § 552a(b)(1)¹ and (b)(7).

9. MODIFICATION OR TERMINATION

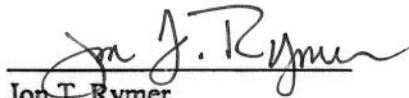
This MOU represents the final agreement of the parties and may not be modified or amended except by separate written agreement signed by all parties. Any party may terminate this MOU by providing written notice to the other parties' Interagency Contacts.

¹ See OMB Privacy Act Implementation: Guidelines and Responsibilities, 40 FR 28,948, 28951 (July 9, 1975) as discussed in *Freeman v. EPA*, 2004 U.S. Dist. LEXIS 21784, D.D.C. (2004).

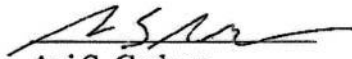
10. COOPERATION AND DISPUTE RESOLUTION

The DoD OIG, EPA, and EPA OIG will cooperate with each other in any way necessary to ensure that the provisions of this MOU are carried out in an expeditious and timely manner. The parties agree that, in the event of a dispute between DoD OIG, EPA, and/or EPA OIG, the parties shall use their best efforts to resolve that dispute in an informal fashion and through consultation and negotiation, or other forms of mutually acceptable non-binding alternative means of dispute resolution.

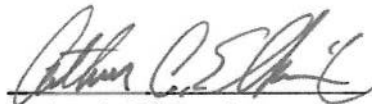
WHEREFORE, this MOU is executed on this 10th day of March 2014.



Jon T. Rymer
Inspector General
Department of Defense



Avi S. Garbow
General Counsel
Environmental Protection Agency



Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency